Union Lighterage Co. v. *London Graving Dock Co.*, [1902] 2 Ch. 557, 567. Cf. *Seymour* v. *Lewis*, 2 Beas. (N. J.) 439, 448; *Dunklee* v. *Wilton R. R. Co.*, 24 N. H. 489, 497. But in the principal case the necessity was non-existent at the time of the severance of the property. Consequently even the more lenient view will support the case.

EQUITABLE ELECTION — WHETHER HEIR CAN CLAIM BOTH LEGACY AND LAPSED RESIDUARY DEVISE. — An Iowa testator willed one half the residue of his property to his son and the other half to his wife. The son having predeceased the testator, the widow claims by descent the lapsed title to an undivided half of certain land in Minnesota which was part of the residue. By Minnesota law the widow, where there are no lineal descendants, is sole heir-at-law of her husband. Her claim is opposed by those who would have been heirs had there been no widow. They assert that the widow is barred from taking this property as heir because of an election she had made in Iowa to accept the provisions of the will. *Held*, that the widow must abide by her Iowa election, and her opponents are entitled to the lapsed interest in half the land. *In re McAllister's Estate*, 160 N. W. 1016 (Minn.).

It is true that an election at the domicil of the testator will be recognized as binding in another state. *Washburn* v. *Van Steenwyk*, 32 Minn. 336, 20 N. W. 324. See WHARTON, CONFLICT OF LAWS, 3 ed., § 599 *e*. But it would seem clear that when no election is necessary it should not, when made, affect the party's rights. *Collins* v. *Collins*, 126 Ind. 559, 25 N. E. 704. The doctrine of election is often said to have its basis in the testator's intention. To justify the result in the principal case, such intention must presumably be that the legatee take no more than has actually been bequeathed to him. Yet as a matter of fact the only legitimate presumption can be, that the legatee only take by the will if he does not proceed counter to its terms. The taking by intestacy of a legacy lapsed by the death of the legatee, would seem in no sense to contradict the testator's intention. It is more likely, however, that the rule rests simply on equitable principles. See 1 POMEROY, EQUITY, § 465; 23 HARV. L. REV. 138. Briefly stated, the rule is that equity will not allow a benefit under a will to be accepted while rights are likewise being asserted, which are antagonistic to the will, and injurious to a third party. So where a defect in the will prevents the legatee from taking, and the heir seeks not only his own legacy, but also the property which failed to pass to the other legatee, an election is required. *Brodie* v. *Barry*, 2 Ves. & B. 127; *Thellusson* v. *Woodford*, 13 Ves. 209. But where the testator merely declares that his heir take nothing, and fails to make any other disposition of the property, the heir will take by descent in spite of the expressed intention. *Gallagher* v. *Crooks*, 132 N. Y. 338, 30 N. E. 746. As, in the principal case, the legatee, to whom the lapsed legacy was bequeathed, has died, the taking by intestacy of this legacy in addition to other gifts by the will is conduct inequitable to no one, for it deprives no one of rights attempted to be conveyed by the will. So an election was not necessary. *Johnson* v. *Johnson*, 32 Minn. 513, 21 N. W. 725; *Hand* v. *Marcy*, 28 N. J. Eq. 59.

EQUITY — CANCELLATION — UNILATERAL MISTAKE OF FACT. — The defendant sent in a bid for a building contract in which by an honest mistake, without negligence, he omitted to take account of an important item, the bid consequently being much lower than he intended. The plaintiff, not knowing of the mistake, accepted the bid. Before the plaintiff had changed his position in any way, the defendant notified him of the mistake and refused to perform. The plaintiff having brought suit on the certified check deposited by the defendant to insure performance, the defendant seeks cancellation of it in equity. *Held*, that the check should be canceled. *St. Nicholas Church* v. *Kropp*, 160 N. W. 500 (Minn.).

For a discussion of this case, see NOTES, p. 637.